

MINNESOTA SENTENCING GUIDELINES COMMISSION

SUMMARY OF ADOPTED MODIFICATIONS TO THE SENTENCING GUIDELINES

I. The Minnesota Sentencing Guidelines Commission adopted the following modifications, effective August 1, 1992:

A. The Commission adopted the following modification to section C. **Presumptive Sentence:** to clarify that the guidelines presume a prison sentence for offenders currently convicted of a severity level VI drug crime and have any prior felony drug conviction:

. . . Similarly, when the current conviction offense is a severity level VI drug crime or sale of cocaine and there was a previous adjudication of guilt for a ~~severity level VI or above~~ felony violation of Chapter 152 or a felony-level attempt or conspiracy to violate Chapter 152, or was convicted elsewhere for conduct that would have been a felony under Chapter 152 if committed in Minnesota (See Minn. Stat. § 152.01, subd. 16a) before the current offense occurred, the presumptive disposition is Commitment to the Commissioner of Corrections. The presumptive duration of sentence is the fixed duration indicated in the appropriate cell of the Sentencing Guidelines Grid, or the mandatory minimum, whichever is longer.

B. The Commission adopted a modification to section E. **Mandatory Sentences** to reflect changes made to law for certain repeat sex offenders:

When an offender has been convicted of an offense with a mandatory minimum sentence of five years, the presumptive duration of the prison sentence should be 60 months or the duration provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer, First degree murder and certain sex offenders convicted under Minn. Stat. § 609.346, subd. 2a, which ~~has~~ have a mandatory life imprisonment sentence, ~~is~~ are excluded from offenses covered by the sentencing guidelines.

When an offender has been sentenced according to Minn. Stat. § 609.196, Mandatory Penalty for Certain

Murderers, or has been sentenced according to Minn. Stat. § 609.346, subd. 2a~~b~~, which provides for a mandatory sentence of 370 years for certain sex offenders; the statutory provision determines the presumptive sentence.

C.The Commission adopted a modification to section **E. Mandatory Sentences** to further clarify the policy of the guidelines regarding mandatory minimum sentences for crimes involving dangerous weapons:

When an offender has been convicted of an offense with a mandatory minimum sentence under Minn. Stat.

§ 609.11, which would otherwise be a presumptive stayed sentence under the sentencing guidelines,
the court on its own motion or on the motion of the prosecutor may sentence without regard to the
mandatory minimum sentence. The presumptive disposition, however, is commitment to the
commissioner. A stay of imposition or execution of sentence, while provided for under Minn. Stat. §
609.11, subd. 8, constitutes a departure from the presumptive sentence and the judge must provide
written reasons which specify the substantial and compelling nature of the circumstances.

D.The 1992 Legislature directed the Commission to modify the consecutive policy to provide that an inmate of a state correctional facility who is convicted of committing a felony in prison receives a presumptive consecutive sentence to the sentence currently being served by the inmate and provide that the judge be able to depart from the presumptive consecutive sentence based on evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime. The Commission adopted the following modifications to section **F. Concurrent/Consecutive Sentences** and corresponding commentary.

Consecutive sentences may be given only in the following cases: . . .

3.When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, unless the offender escaped from an executed prison sentence. The
presumptive disposition for escapes from executed sentences shall be execution of
the escape sentence. If the ~~executed~~ escape sentence is to be served concurrently with other sentences, the presumptive duration shall be that indicated by the appropriate cell of the Sentencing Guidelines Grid. ~~If the executed escape~~

~~sentence is to be served consecutively to other sentences, the presumptive duration shall be that indicated by the aggregation process set forth below.~~

When the conviction is for escape from lawful custody, as defined in Minn. Stat. § 609.485, and the offender escaped from an executed prison sentence, it is presumptive for the sentence to be consecutive to the sentence for which the inmate was confined at the time the new escape offense was committed. The presumptive disposition for escapes from executed sentences shall be execution of the escape sentence.

It is also presumptive for the sentence for a felony conviction resulting from a crime committed by an inmate serving an executed prison sentence at a state correctional facility, or while on escape status from such a facility, to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. A concurrent sentence under these circumstances constitutes a departure from the presumptive sentence. A special, nonexclusive, mitigating departure factor may be used by the judge to depart from the consecutive presumption and impose a concurrent sentence: there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime.

For persons given consecutive sentences . . .

For persons given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.

II.F.01. *Consecutive sentences are a more severe sanction because the intent of using them is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. Generally, ~~t~~The Commission has established criteria which permits, but does not*

require, the use of consecutive sentences in the instances listed in the guidelines. For felony convictions committed while an offender is serving an executed prison sentence or while on escape status from such a facility, it is presumptive to impose the sentence for the current offense consecutive to the sentence for which the inmate was confined at the time the new offense was committed. The guidelines create a presumption against the use of consecutive sentence in all other cases not meeting the guideline criteria. If consecutive sentences are used in such cases, their use constitutes a departure from the guidelines and written reasons are required.

II.F.02. . . . It is permissive for a sentence for an escape conviction from a nonexecuted prison sentence to be consecutive to any other current sentence and any prior sentence regardless of whether the other sentences are for crimes against the person. It is presumptive for a sentence for an escape conviction from an executed prison sentence to be consecutive to the sentence for which the inmate was confined at the time the new offense was committed. If the sentencing judge determines that the sentence for an escape conviction is to be consecutive with sentences for other current felony convictions, the escape conviction should be sentenced last with the presumptive duration found at the zero criminal history column and the appropriate severity level. For person given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid.

II.F.03. For cases with a prior felony sentence, which has neither expired nor been discharged, and a single current conviction, and when the current conviction is sentenced consecutive to the prior, the presumptive duration for the current conviction is found at the zero criminal history column and the appropriate severity level, unless the consecutive sentence is presumptive. For person given presumptive consecutive sentences, the presumptive duration is determined by a criminal history score of one rather than at the zero criminal history column on the Grid. The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for persons sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for persons revoked and reimprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.

E.Proposals Regarding Crimes Created or Amended by the 1992 Legislature

1)The Commission adopted the following severity level rankings for crimes amended or created by the 1992 Legislature:

<u>Severity Level IX</u>	Murder 2 without Intent (new provision) - 609.19 (3)
<u>Severity Level VI</u>	All Controlled Substance Crimes in the Third Degree - 152.023

2)The Commission adopted the proposal to add the following new crimes to the Theft Related Offense List:

Workers Compensation Fraud - 176.178
Theft by False Representation (new provisions) - 609.52, subd. 2 (d) & (e)
Assistance Transaction Card Fraud - 256.986, subd. 3

3)The Commission adopted the proposal to add the following amended crime to the *Misdemeanor and Gross Misdemeanor Offense List*:

Assault in the Fourth Degree - 609.2231, subd. 2, 4, 5, & 6

4)The Commission adopted the proposal that the following amended crimes remain ranked at their previous severity level rankings:

Controlled Substance Crimes in the 1st Degree - 152.021 (Severity Level VIII)
Controlled Substance Crimes in the 2nd Degree - 152.022 (Severity Level VII)
Controlled Substance Crimes in the 4th Degree - 152.024 (Severity Level IV)
Controlled Substance Crimes in the 5th Degree - 152.025 (Severity Level II)
Importing Controlled Substances Across State Borders - 152.261 (Severity Level VIII)
Assault 2nd Degree - 609.222 (including new provision) (Severity Level VI)
All Solicitation of Prostitution - 609.322 (various severity levels)
All Receiving Profit Derived from Prostitution - 609.323 (various severity levels)

5)The 1992 Legislature requested the Commission consider modifying the severity level ranking for Criminal Vehicular Homicide, 609.21, subd. 1, clauses (3) & (4) and subd. 3, clauses (3) & (4). Because this directive does not go into effect until January 1, 1993, the Commission moved to table consideration regarding these severity level rankings until after such date.

6)The Commission adopted the proposal to not change at this time the severity level rankings for amended criminal sexual conduct laws. The Commission will reexamine the severity level rankings for criminal sexual conduct offenses and report to the Legislature in February, 1993 (as requested by the 1992 Legislature).

F.The Commission adopted the following changes to the Offense Severity Reference Table to correct the appropriate statutory cites:

<u>Severity Level IV</u>	Theft of Motor Vehicle - 609.52, subd. <u>2 (1)</u> 3(3) (d) (vi)
<u>Severity Level I</u>	Assault 4 - 609.2231, subd. 1 & <u>23</u>

G.The Commission adopted a modified Sentencing Guidelines Grid that clarifies that certain offenses above the dispositional line carry a presumptive commitment to a state prison, including: Criminal Vehicular Homicide, Assault 2nd Degree and other applicable crimes involving a dangerous weapon, Controlled Substance Crimes in the Third Degree when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, and second or subsequent Criminal Sexual Conduct offenses. The modified grid also contains the effective date.

H. The Commission adopted the following changes to commentary to clarify sentencing guidelines policy:

1) Comment II.A.07 - clarifies the appropriate statutory cites for Theft of Motor Vehicle convictions.

There are two theft offenses involving a motor vehicle that are ranked individually on the Offense Severity Reference Table. For Theft of a Motor Vehicle, ranked at severity level IV, the offender must be convicted under the general theft statute, Minn. Stat. § 609.52, subd. 2 (1) and the offense must involve theft of a motor vehicle, in order for severity level IV to be the appropriate severity level ranking. It is the Commission's intent that any conviction involving the permanent theft of a motor vehicle be ranked at severity level IV, regardless of the value of the motor vehicle. If an offender is convicted of Motor Vehicle Use Without Consent under Minn. Stat. § 609.52, subd. 2 (17), the appropriate severity level is III, regardless of whether the sentencing provision that is cited is Minn. Stat. § 609.52, subd. 3 (3) (d) (vi).

2) Comment II.B.101. - clarifies the weight of prior attempted crimes for the purpose of criminal history and clarifies the method for determining the weight of prior drug crimes for purpose of criminal history.

II.B.101. *The basic rule for computing the number of prior felony points in the criminal history score is that the offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing or for which a stay of imposition of sentence was given before the current sentencing. Prior felony convictions for an attempt or conspiracy for which a felony sentence was stayed or imposed before the current sentencing are weighted the same as completed offenses. The felony point total is the sum of these weights. No partial points are given -- thus, a person with less than a full point is not given that point. For example, an offender with a total weight of 2 1/2 would have 2 felony points.*

The Commission determined that it was important to establish a weighting scheme for prior felony sentences to assure a greater degree of proportionality in the current sentencing. Offenders who have a history of serious felonies are considered more culpable than those offenders whose prior felonies consist primarily of low severity, nonviolent offenses.

The Commission recognized that determining the severity level of the prior felonies may be difficult in some instances. The appropriate severity level shall be based on the severity level ranking of the prior offense of conviction that is in effect at the time the offender commits the current offense. If an offense has been repealed but the elements of that offense have been incorporated into another felony statute, the appropriate severity level shall be based on the current severity level ranking for the current felony offense containing those similar elements. For example, Unauthorized Use of a Motor Vehicle had been ranked at severity level I but was repealed in 1989. The elements of that offense were moved by the legislature to another statute and the new offense was ranked at severity III. Therefore, the appropriate severity level that should be used to determine the weight of any prior felony sentences for Unauthorized Use of a Motor Vehicle is severity level III.

Similarly, if an offense has been redefined by the legislature, the appropriate severity level shall be based on how the prior felony offense would currently be ranked in consideration of any new or removed elements. For example, in 1989, the controlled substance laws were restructured and the current severity level rankings are in most situations determined on the basis of the amount and type of drug involved in the conviction. For prior Minnesota controlled substance crimes committed before

August 1, 1989 and all prior foreign controlled substance convictions, ~~The~~ the amount and type of the controlled substance should, therefore, be considered in the determination of the appropriate weight to be assigned to a prior felony sentence for a controlled substance offense. In those instances where multiple severity levels are possible for a prior felony sentence but the information on the criteria that determine the severity level ranking is unavailable, the lowest possible severity level should be used. However, for prior controlled substance crimes committed on or after August 1, 1989, the current severity level ranking for the degree of the prior controlled substance conviction offense should determine the appropriate weight. This particular policy application is necessary to take into account any plea negotiations or evidentiary problems that occurred with regard to the prior offense.

II.The Commission adopted the several modifications that will become effective August 1, 1993, after the 1993 Legislature has reviewed them.

Several felony offenses were recently discovered that had not been considered for ranking by the Commission. These crimes are technically unranked at this time. The Commission adopted the following severity level rankings for these crimes:

Severity Level III

Tax Evasion Laws - 289A.63
Damages; Illegal Molestation of Human Remains; Burials; Cemeteries - 307.08, subd.2

Severity Level II

Gambling Regulations - 349.2127, subd. 1-6
Wildfire Arson - 609.5641, subd. 1
Bribery of Participant or Official in Contest - 609.825, subd. 2

Severity Level I

Motor Vehicle Taxes - 296.25, subd. 1(b)
Excise Tax on Alcoholic Beverages - 297C.13, subd. 1
Certification for Title on Watercraft - 86B.865, subd. 1
Criminal Penalties Regarding the Activities of Corporations - 300.60

Add to Unranked Offense List

Unlawful Transfer of Sounds; Sales - 325E.20

III.The 1992 Legislature directed the Commission to modify section II.B.3 of the sentencing guidelines to provide that the criminal history score of any person convicted of violating section 609.21 shall include one-half point for each previous violation of section 169.121, 169.1211 or 169.129. Because this directive is not effective until January 1, 1993, the Commission adopted the following policy to become effective August 1, 1993 along with next

year's modifications:

3. Subject to the conditions listed below, the offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction included on the Misdemeanor and Gross Misdemeanor Offense List and ~~(excluding traffic offenses with the exception of DWI and aggravated DWI offenses, which are assigned two units each, when the current conviction offense is criminal vehicular operation)~~ for which a sentence was stayed or imposed before the current sentencing. All felony convictions resulting in a misdemeanor or gross misdemeanor sentence shall also be used to compute units. Four such units shall equal one point on the criminal history score, and no offender shall receive more than one point for prior misdemeanor or gross misdemeanor convictions. There is the following exception to this policy when the current conviction is criminal vehicular homicide or injury: previous violations of section 169.121, 169.1211 or 169.129 are assigned two units each and there is no limit on the total number of misdemeanor points included in the criminal history score due to DWI violations.

II.B.301. *The Commission established a measurement procedure . . .*

As a general rule, the Commission eliminated traffic misdemeanors and gross misdemeanors from consideration. However, the traffic offenses of driving while intoxicated and aggravated driving while intoxicated have particular relevance to the offense of criminal vehicular homicide or injury operation. Therefore, prior misdemeanor and gross misdemeanor sentences for violations under 169.121, 169.1211 or 169.129 DWI and aggravated DWI shall be used in the computation of the misdemeanor/gross misdemeanor point when the current conviction offense is criminal vehicular homicide or injury operation. These are the only prior misdemeanor and gross misdemeanor sentences that are assigned two units each.

II.B.302. *The Commission placed a limit of one point on the consideration of misdemeanors or gross misdemeanors in the criminal history score. . . Offenders whose criminal record includes at least four prior sentences for misdemeanors and gross misdemeanors contained in the Misdemeanor and Gross Misdemeanor Offense List, are considered more culpable and are given an additional criminal history point under the guidelines. The Commission believes that offenders whose current conviction is for criminal vehicular homicide or injury and who have prior violations under 169.121, 169.1211 or 169.129 are also more culpable and for these offenders there is no limit to the total number of misdemeanor points included in the criminal history score due to DWI violations.*